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OFFICE OF PETITIONS

In re Application of
Philip W. Eggleston
Application No. 10/005,534
Filed: November 8, 2001
Attorney Docket No. EGGL-00001D2

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.181, filed January 6, 2006, to withdraw the holding of abandonment for the above-identified application.

On November 13, 2003, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period to reply. In the apparent absence of a timely filed response, the Office mailed a Notice of Abandonment on July 8, 2004.

In the present petition, petitioner asserts that he filed a timely response to the nonfinal Office action in the form of an amendment with a certificate of mailing dated February 12, 2004. In support of his assertion, petitioner submits the following: (1) a copy of a previously mailed amendment, containing a certificate of mailing dated February 12, 2004; (2) a copy of a portion of a docketing log; (3) a copy of the front of the file kept by the docketing department of the law office; and (4) a statement under 37 CFR 1.8(b)(3).

Pursuant to 37 CFR 1.8:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

After reviewing the record and the papers submitted on petition, the response is considered timely filed on February 12, 2004. Accordingly, the petition is **granted**. The Notice of Abandonment is hereby withdrawn. The application is restored to pending status in view of the fact that a response was timely submitted on February 12, 2004.

The matter is being referred to the Technology Center 3673.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Any questions regarding the status of the application or the examination process should be directed to the Technology Center.

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